

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

-.-

FAO 7816 of 2015 (O&M)
Date of decision: 05.09.2017

Rajesh Pal alias Rajnish Pal

..... Appellant

Versus

Madan Puri and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Vipin Mahajan, Advocate
for the appellant

None for the respondents

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Rekha Mittal, J. (Oral)

CM 25545 CII of 2015

Allowed as prayed for.

CM 25546 CII of 2015

Prayer in this application is for condonation of delay of 111 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the applicant and arguments advanced by counsel for the applicant, delay in filing the appeal is sufficiently explained. Accordingly, the application is allowed and delay of 111 days in filing the appeal stands condoned.

Main case

The owner and insured of Truck bearing No. PB-06-D-7196 (alleged offending vehicle) has approached this Court to assail findings of the Motor Accidents Claims Tribunal, Gurdaspur, whereby while deciding

Issue No.3, it has been held that driver of the offending vehicle namely

Sunil Kumar Paswan did not possess a valid driving licence, therefore, he was not authorized to drive the offending truck at the time of occurrence. As a result of findings on Issue No.3, the insurance Company has been given right of recovery against owner and driver of the offending vehicle.

Counsel for the appellant has submitted that onus of Issue No.3 “whether respondent No.2 was not authorized to drive the truck No.PB-06-D-7196 at the time of occurrence? OPR3” was placed upon the insurance company. To discharge the onus, respondent No.3 therein tendered into evidence certificate dated 07.02.2015 from the Transport Department, Government of Nagaland. It is argued that the insurance company did not examine any witness to prove correctness and authenticity of report Ex.R5 much less examining a witness from the concerned District Transport Office along with records to establish that driver was not possessing a valid driving licence at the time of occurrence. In addition, it is argued that in Report Ex.R5 (photocopy thereof has been placed on record as Annexure A-1), date has been mentioned as 07.02.2015 but in the body writing, there is reference to memo No. NI/INVI/014 dated nil received on 17.02.2015 sufficient to create a doubt regarding correctness of the document. Mr. Narender Tapodhan, Investigator Insurance to whom this communication has been addressed to was not examined to prove the document. It is argued with vehemence that as the insurance company neither examined a witness from the concerned licensing authority nor Mr. Narender Tapodhan, reliance upon report Ex.R5 by the Tribunal is totally misplaced, therefore, findings of the Tribunal on Issue No.3 cannot be allowed to sustain and liable to be set aside.

I have heard counsel for the appellant, perused the paper book particularly award dated 23.04.2015 and document Annexure A-1.

The learned Tribunal by relying upon report Ex.R5 has determined issue No.3 in favour of the insurance company and against the claimants. Report Ex.R5 is not per se admissible in evidence. The insurance company did not examine any witness along with records from the concerned licensing authority to discharge onus of Issue No.3 that driving licence Ex.R2 produced on record by owner of the offending vehicle was not issued by the concerned licensing authority and the same is fake. As has been rightly argued by counsel, the insurance company did not examine any witness to prove report Ex.R5 (Annexure A1) providing an opportunity to the claimants and appellants to challenge its correctness and authenticity. Under the circumstances, the Tribunal has seriously erred by relying upon report Ex.R5 to answer Issue No.3 in favour of the insurance company and providing right of recovery against the driver and owner of the offending vehicle. In view of the above, findings of the tribunal on Issue No.3 as well as giving recovery right to the insurance company against the driver and insured cannot be allowed to sustain and are accordingly set aside.

For the foregoing reasons, the appeal is allowed in the aforesaid terms.

(Rekha Mittal)
Judge

05.09.2017
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No